

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS PATRICK McMILLIN		DEFENDANTS NCO FINANCIAL SYSTEMS, INC.	
(b) County of Residence of First Listed Plaintiff _____ (c) Attorney's (Firm Name, Address, Telephone Number and Email Address) Craig Thor Kimmel, Esquire Kimmel & Silverman, P.C. 30 E. Butler Pike Ambler, PA 19002 (215) 540-8888		County of Residence of First Listed Defendant _____ NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)	
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6
IV. NATURE OF SUIT (Place an "X" in One Box Only)			
CONTRACT		TORTS	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine Product Liability <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending Act <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	
PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	
BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157		PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act		SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	
VI. CAUSE OF ACTION VII. REQUESTED IN COMPLAINT:		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C SECTION 1692 Brief description of cause: Fair Debt Collection Practices Act	
VIII. RELATED CASE(S) (See instructions):		DEMAND S	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
JUDGE Explanation: <i>6-13-11</i>		DOCKET NUMBER	
DATE		SIGNATURE OF ATTORNEY OF RECORD	

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1325 Deer Horn Lane, North Las Vegas, NV 89031

Address of Defendant: _____

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes No

CIVIL: (Place in ONE CATEGORY ONLY)A. *Federal Question Cases:*

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations

7. Civil Rights

8. Habeas Corpus

9. Securities Act(s) Cases

10. Social Security Review Cases

11. All other Federal Question Cases
(Please specify)

15 U.S.C. §1692

B. *Diversity Jurisdiction Cases:*

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Krimmel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 33.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: _____

Craig Thor Krimmel
Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

Craig Thor Krimmel
Attorney-at-Law

57100

Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

Patrick McMillin
v.
NCO Financial Systems, Inc.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § I:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

Date

215-540-8888Craig Thark Kimmel

Attorney-at-law

Patrick Mc Millin

Attorney for

Telephone

FAX Number

E-Mail Address

877-788-2864Kimmel@creditlaw.com

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

PATRICK MCMILLIN ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

1 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
2

3 **PARTIES**

4 6. Plaintiff is a natural person residing in North Las Vegas, Nevada, 89031.
5

6 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
7

8 8. Defendant is a national debt collection company with its corporate headquarters
9 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.
10

11 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
12 and repeatedly contacted Plaintiff in an attempt to collect a debt.
13

14 10. Defendant acted through its agents, employees, officers, members, directors,
15 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
16

17 **PRELIMINARY STATEMENT**

18 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
19 which prohibits a catalog of activities in connection with the collection of debts by third parties.
20 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
21 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
22 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
23 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
24 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
25 unconscionable conduct, both generally and in a specific list of disapproved practices.

26 12. In particular, the FDCPA broadly enumerates several practices considered
27 contrary to its stated purpose, and forbids debt collectors from taking such action. The
28

1 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
2 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
3 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
4 collector may not use any false, deceptive, or misleading representation or means in connection
5 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
6 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
7 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
8 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
9 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
10 connection with the collection of a debt.
11

12 13. In enacting the FDCPA, the United States Congress found that “[t]here is
13 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
14 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
15 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
16 additionally found existing laws and procedures for redressing debt collection injuries to be
17 inadequate to protect consumers. 15 U.S.C. § 1692b.
18

19 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
20 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
21 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
22 collection practices are not competitively disadvantaged, and to promote consistent State action
23 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
24
25

FACTUAL ALLEGATIONS

15. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

17. Beginning in or around February 2011, Defendant, its agents, employees, and servants, engaged in debt collection activities seeking payment from Plaintiff.

18. Defendant, its employees and servants harassed Plaintiff by making continuous calls to his home telephone number.

19. Plaintiff received phone calls from (800) 685-4343, which the undersigned confirmed is a phone number belonging to Defendant.

20. In addition to calling Plaintiff, Defendant left messages on Plaintiff's answering machine instructing him to contact "Karen Anderson" at "NCO" regarding a "debt collection" issue.

21. Wanting the have the repetitive calls stop, on February 22, 2011, Plaintiff contacted Defendant and requested to speak with "Karen Anderson "

22. Defendant's representative, "Ms. Home," informed Plaintiff that "Karen Anderson" was not available, as she was at lunch.

23. Plaintiff provided "Ms. Home" with his home telephone number and inquired why Defendant had been contacting him repeatedly.

24. "Ms. Home" claimed to Plaintiff that he owed over \$600.00 to a company called BCS

25. Plaintiff was confused, as he had not received any correspondence from BCS.

1 26. Moreover, Plaintiff had no recollection of receiving anything from BCS.

2 27. Plaintiff asked "Ms. Home" for more information about BCS, specifically a
3 telephone number for BCS.

4 28. "Ms. Home" was unable to provide Plaintiff with any additional information
5 about the alleged debt or a phone number for BCS.

6 29. Plaintiff avers that Defendant engaged in deceptive collection tactics by trying to
7 collect a debt that it had no knowledge of its validity, as when Plaintiff requested for additional
8 information about the debt, Defendant was unable to provide any further information about the
9 debt or the creditor, including a phone number for the creditor.

10 30. Within five days of its initial communication with Plaintiff, Defendant failed to
11 send written notification advising Plaintiff of his rights and privileges under the law, specifically
12 the right to dispute and/or request verification of the alleged debt.

13 31. Defendant's actions in attempting to collect the alleged debt were harassing,
14 abusive and highly deceptive.

17 **CONSTRUCTION OF APPLICABLE LAW**

18 32. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
19 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
20 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
21 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
22 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
23 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

33. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

34. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

35. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- 1 a. Defendant violated the FDCPA generally;
- 2 b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in
- 3 connection with the collection of an alleged debt;
- 4 c. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's
- 5 telephone to ring repeatedly or continuously with the intent to harass, annoy
- 6 or abuse Plaintiff;
- 7 d. Defendant violated §1692e of the FDCPA by using false, deceptive, or
- 8 misleading representations or means in connection with the collection of a
- 9 debt;
- 10 e. Defendant violated §1692e(10) of the FDCPA by using false representations
- 11 or deceptive means to collect or attempt to collect a debt;
- 12 f. Defendant violated §1692f of the FDCPA by using unfair and unconscionable
- 13 means with Plaintiff to collect or attempt to collect a debt;
- 14 g. Defendant violated §1692g of the FDCPA by failing to send written
- 15 notification, within five (5) days after its initial communication with Plaintiff,
- 16 advising Plaintiff of her rights to dispute the debt or request verification of the
- 17 debt; and
- 18 h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
- 19 and failed to comply with the FDCPA.

1
2 WHEREFORE, Plaintiff, PATRICK MCMILLIN, respectfully prays for a judgment as
3 follows:

4 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
5 1692k(a)(1);
6 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
7 15 U.S.C. § 1692k(a)(2)(A);
8 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
9 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
10 d. Any other relief deemed appropriate by this Honorable Court.

11
12 **DEMAND FOR JURY TRIAL**

13 PLEASE TAKE NOTICE that Plaintiff, PATRICK MCMILLIN, demands a jury trial in
14 this case.

15
16 DATED:

17 RESPECTFULLY SUBMITTED,

18 KIMMEL & SILVERMAN, P.C.

19 By: _____

20 Craig Thor Kimmel
21 Attorney ID # 57100
22 Kimmel & Silverman, P.C.
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